ENERGY RESERVES GROUP, INC.

IBLA 84-554 Decided October 29, 1985

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting prospecting permit application A 16816.

Affirmed.

1. Mineral Lands: Prospecting Permits

> The Department of the Interior has no authority to issue a prospecting permit for hardrock minerals on acquired lands subject to sec. 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099), without the consent of the Forest Service, U.S. Department of Agriculture.

APPEARANCES: Keith M. Crouch, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Energy Reserves Group, Inc., has appealed from the March 30, 1984, decision of the Arizona State Office, Bureau of Land Management (BLM), which rejected its prospecting permit application, A 16816, for hardrock minerals gold, silver, and tungsten. Appellant filed the application on May 13, 1981, for the 184.57 acres of acquired land in Mineral Survey 2449, including portions of secs. 14, 15, and 23, T. 23 S., R. 20 E., Gila and Salt River Meridian, Cochise County, Arizona.

The BLM decision outlines the applicable law governing prospecting for hardrock minerals on these acquired lands:

> The above described lands were acquired by the United States Department of Agriculture [sic], Forest Service (FS) under the Department of Agriculture Organic Act of August 3, 1956. (7 U.S.C. 428a).
>
> The above cited Act does not authorize mineral development on Forest Service acquired lands. Therefore, on September 2, 1958, Public Law 85-862 [72 Stat. 1571] was enacted by Congress
>
> > in order to facilitate the administration, management, and consolidation of the national forests, all lands

> of the United States within the exterior boundaries of national forests which were or hereafter are acquired for or in connection with the national forests or transferred to the Forest Service, Department of Agriculture, for administration and protection substantially in accordance with national forest regulations, policies, and procedures, [* * *] notwithstanding the provisions of any other Act, are hereby made subject to the Weeks Act of March 1, 1911 (36 Stat. 961), as amended, and to all laws, rules, and regulations applicable to national forest lands acquired thereunder.

43 CFR 3500.0-3(b)(2) sets out the specific authorities for leasing hardrock minerals on acquired lands. Subsection (i) refers to the authority transferred to the Secretary of Interior by the Reorganization Plan No. 3 of 1946, Section 402 (60 Stat. 1099). As applies to this case, the authority stems from the following source:

> Act of March 4, 1917 (Ch. 179, 39 Stat. 1150, [16 U.S.C. § 520 (1982)])
>
> The Secretary of Agriculture is authorized, under general regulations to be prescribed by him, to permit the prospecting, development, and utilization of the mineral resources of the lands acquired under the Act of March 1, 1911, known as the Weeks law, upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States. * * *

Reorganization Plan No. 3 provides, with respect to the category listed above, that "mineral development on such lands shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture [that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes.]" [See 16 U.S.C. § 520 note (1982).]

The Forest Service, U.S. Department of Agriculture, prepared an environmental assessment (EA) analyzing the prospecting permit proposal. In the accompanying decision notice, dated February 2, 1984, the Forest Service concluded that although prospecting activities would not have significant environmental impacts, a potential mining operation could. It noted that if prospecting reveals sufficient minerals, the prospector is eligible for a preference right lease to mine as outlined in the proposal. The Regional Forester, Coronado National Forest, chose denial of the prospecting permit out of five alternatives analyzed by the EA:

> It is my decision to select Alternative E [no action] which denies the application. This alternative eliminates conflicts with recreation development, and use and quality of recreation experiences. This alternative satisfies recreation management objectives, eliminates impacts to the physical environment, assures public safety on the Carr Canyon Road, and meets public desires.

BLM rejected appellant's application, citing 43 CFR 3501.2-6(a). That regulation provides that "prospecting permits may be issued only with the consent of the head or other appropriate official of the executive department * * * having jurisdiction over the lands containing the deposits * * *."

On appeal to the Board, appellant argues that the BLM decision was arbitrary, capricious, and erroneous, given the Forest Service determination that prospecting, in itself, would not cause undue adverse impacts. Appellant asserts that the Forest Service conclusion that mining activity on the subject land would adversely affect recreational objectives was unsupported. Appellant submits that the statutes and regulations governing the issuance of preference right leases would provide adequate safeguards. Appellant asserts the impacts of mining cannot be addressed until exploration is complete, and points out that Goldsil Mining & Milling, Inc., successor in interest to the appellant, owns 17 mining claims adjacent to the subject tract and plans an integrated exploration for both the claims and the subject tract. Appellant argues it can explore in a manner consistent with recreational and other multiple-use management objectives.

[1] BLM's decision must be affirmed. 43 CFR 3501.2-6(d) provides: "The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired * * *. An application will be rejected if the Secretary of Agriculture does not give his consent." See Henry N. Gerritsen, 3 IBLA 90 (1971); cf. John W. Jewell, 53 IBLA 179 (1981). Because the Forest Service has withheld its consent, the Secretary of the Interior cannot issue the permit and the application was properly rejected.

Therefore, pursuant to the the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Arizona State Office is affirmed.

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Will A. Irwin
Administrative Judge

We concur:

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James L. Burski
Administrative Judge

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Franklin D. Arness
Administrative Judge